

D.P.U. 91-234-G

Petition of Commonwealth Electric Company and Cambridge Electric Light Company, pursuant to M.G.L. c. 164, §§ 69I, 76, 94, and 220 C.M.R. §§ 10.00 et seq., for review of the procedures by which additional energy resources are planned, solicited, and procured by Commonwealth Electric Company and Cambridge Electric Light Company.

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I. INTRODUCTION

On April 1, 1994, Commonwealth Electric Company ("Commonwealth") and Cambridge Electric Light Company ("Cambridge") (together, "Companies") submitted their Phase III filing, as prescribed under the Department's Integrated Resource Management regulations, 220 C.M.R. **SS** 10.00 et seq., to the Department for review. On May 31, 1994, the Department issued its Order in review of the Companies' Phase III filing. See Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234-B (1994).¹ On June 3, 1994, the Companies submitted a Phase IV filing to the Department for review, and on June 21, 1994, June 29, 1994, and August 3, 1994, the Companies supplemented their Phase IV filing ("August 3, 1994 Supplemental Filing"). In the June 21, 1994 and June 29, 1994 Supplemental Filings, the Companies reported that several bidders whose projects had been included in the approved Award Group had withdrawn their proposals. In the August 3, 1994 Supplemental Filing, the Companies submitted their proposed response to the withdrawal of proposals from the approved award group.

On August 17, 1994, pursuant to 220 C.M.R. § 10.06(2)(j), Conservation Services

¹ In D.P.U. 91-234-B, the Department approved an award group that, for Commonwealth, included retrofit programs by Citizens Conservation Corporation ("Citizens") and Conservation Services Group ("CSG") in the residential non-heat sector; Syracuse Energy Services Company, Inc. ("SYRESCO") and CSG in the residential heat sector; Northeast Energy Services, Inc. ("NORESCO") and DMC Services, Inc. in the small general-use sector; and NORESCO, Achushnet Company, Titleist & Foot-Joy, Aerovox, Inc., EUA Cogenex Corporation, and HEC, Inc. in the medium/large general-use sector. For Cambridge, the award group included retrofit programs by Citizens and SESCO, Inc. in the residential non-heat sector; Citizens and SESCO, Inc. in the residential heat sector; DMC Services, Inc. in the small general-use sector; and NORESCO, Esplanade Condominiums, EUA Cogenex Corporation, Proven Alternatives, Inc., Kenetech Energy Management, Inc., and HEC, Inc. in the medium/large general-use sector. In addition, the award group included new construction programs offered by Cambridge and Commonwealth in all sectors.

Group ("CSG") petitioned the Department for a review of its contract negotiations with the Companies ("CSG Petition"). On August 29, 1994, the Companies filed a response in opposition to CSG's petition stating that CSG had withdrawn its proposal from Commonwealth's residential non-heat sector,² and that the Companies had terminated contract negotiations with CSG for Commonwealth's residential heat sector. On September 2, 1994, the Companies submitted a plan for the replacement of CSG in Commonwealth's award group ("September 2, 1994 Supplemental Filing"). In this Order, the Department reviews the August 3, 1994 and September 2, 1994 requests by the Companies to modify the Department-approved award group.

II. THE COMPANIES' PROPOSAL

A. August 3, 1994 Supplemental Filing

In their August 3, 1994 filing to the Department, the Companies stated that Aerovox, Inc. and HEC, Inc. had withdrawn their proposals for programs for Commonwealth's medium/large general-use sector, and that Esplanade Condominiums, Proven Alternatives, Inc., and Kenetech Energy Management, Inc. had withdrawn their proposals for programs for Cambridge's medium/large general-use sector (August 3, 1994 Supplemental Filing at 2). In addition, the Companies stated that Syracuse Energy Services Company, Inc. ("SYRESCO") had withdrawn its proposal for a program for Commonwealth's residential electric heat sector (id.).

² CSG did not respond to this contention by the Companies.

For Commonwealth's residential electric heat sector, the Companies proposed to reallocate funds to CSG, the remaining proposer in this sector, since CSG had previously agreed to a respecified bid below 100 percent of its original bid (id. at 3). For Commonwealth's medium/large general-use sector, the Companies stated that they applied the previously approved resource selection procedure in considering potential replacement resources, and developed the resulting bidder payment streams (id.). Because the ramp-up schedules of the projects associated with the remaining award group proposals resulted in payment streams in some years that would reach the limits of the budget level, the Companies contended that an additional resource to serve this sector could not be procured consistent with the established budget (id. at 4).

The Companies stated that they performed a similar analysis for Cambridge's medium/large general-use sector and determined that there was sufficient room in the budget to replace the withdrawn proposals (id.). The Companies analyzed the highest ranking proposal from the original group of bidders, CES/Way International, Inc. ("CES/Way"), and concluded that the proposal would need to be respecified in terms of a volume reduction in order to stay within the established budget (id.). In addition, the Companies requested that CES/Way consider enhancing the price component and other aspects of its proposal (id. at 5). The Companies contended that it would be appropriate to add the CES/Way proposal to the award group given the original score of the CES/Way proposal, the significant price enhancement, and the fact that the addition of the CES/Way proposal would result in a greater utilization of the available budget (id.).

B. September 2, 1994 Supplemental Filing

After terminating contract negotiations with CSG for Commonwealth's residential electric heat sector, the Companies determined that the bidder with the next highest ranking from the original group of bidders that satisfied all relevant threshold requirements was DMC Services, Inc. ("DMC") (September 2, 1994 Supplemental Filing at 3). In addition, the Companies determined that there would be additional funds available for this market segment after the addition of the DMC proposal (id. at 4). Therefore, the Companies considered adding to the Award Group the next highest ranking proposal, that of SESCO, Inc. (id.). The Companies determined that SESCO's proposal satisfied all relevant threshold requirements and concluded that adding the SESCO proposal to the Award Group as a replacement resource would be likely to secure exceptional value for Commonwealth's customers (id.).³

As a result of CSG's withdrawal in Commonwealth's residential non-electric heat sector, the Companies stated that the next proposal from the original group of bidders that satisfied the relevant threshold requirements in this sector was that of SESCO, Inc. (id. at 5).⁴ The Companies stated that adding SESCO as a replacement resource would be likely to provide exceptional value to Commonwealth's ratepayers (id.). The Companies also stated

³ The Companies stated that SESCO's proposal would need to be respecified to reflect a reduction in the scope and budget in order to avoid exceeding the established budget for the Companies' programs in the residential electric heat sector (id.).

⁴ The Companies stated that the next ranked proposal, Energy Federation, Inc. ("EFI"), failed to meet the RFP's threshold standards (September 2, 1994 Supplemental Filing at 5). Accordingly, the Companies determined that EFI should not be added to the award group as a replacement resource (id.).

that SESCO could be added to the award group within the established budget (id. at 6).

For Cambridge's and Commonwealth's small general-use sectors, the Companies expressed concern that the available budgets might be exceeded in future years absent the effective management of program implementation (id.). The Companies proposed to seek amendments to their contracts to increase the ramp-up of programs during earlier years, and contended that this would preserve the budgets while maximizing the energy savings benefits for customers (id.).

III. ANALYSIS AND FINDINGS

The IRM regulations provide that if any project selected for the final award group is subsequently canceled or abandoned, the company shall attempt to replace the project with another project, or projects, from the most recently completed solicitation. 220 C.M.R. § 10.05(4)(a). If the company is unable to replace the lost project with one from the most recently completed solicitation, then the company shall describe to the Department the reasons for the inability to do so. Id. The IRM regulations also provide that the replacement project should be chosen so that the final mix of resources is most likely to result in a reliable supply of electrical service at the lowest total cost to society, and that the company shall justify to the Department the basis for selecting the replacement project. 220 C.M.R. § 10.05(4)(b).

For the Commonwealth medium/large general-use sector, the Department finds that the Companies have provided sufficient justification for the decision not to replace the withdrawn resources. For the Cambridge medium/large general-use sector, the Department finds that the Companies have provided sufficient justification for the replacement of the

withdrawn resource. With respect to the Cambridge and Commonwealth medium/large general-use sectors, the Department finds that the Companies' proposal is consistent with the IRM regulations, and that, because the Companies have chosen the next highest ranked resources from the original group of bidders, the final mix of resources is most likely to result in a reliable supply of electrical service at the lowest total cost to society.

With respect to Commonwealth's residential non-electric heat sector, the Department finds that the Companies have provided sufficient justification for replacement of the withdrawn resource, and that, by choosing the next highest ranked proposal from the original group of bidders, the Companies' proposal is consistent with the IRM regulations.

For Commonwealth's residential electric heat sector, given CSG's petition for a review pursuant to 220 C.M.R. § 10.06(2)(j), the Department finds that the Companies' proposal is not consistent with the IRM regulations. While the Companies may negotiate with replacement resources, the inclusion in the award group is subject to the disposition of CSG's Petition. Further, pursuant to 220 C.M.R. § 10.06(2)(j), CSG cannot lose its place in the ranking until otherwise determined by the Department.⁵

With respect to the Cambridge and Commonwealth small general-use sector, to the extent that the Companies have determined that the established budgets may be exceeded in future years, the Companies should seek amendments to the contracts with bidders to preserve the approved budgets while maximizing the energy savings benefits for customers, and should provide any amendments, with justification, to the Department for review.

⁵ CSG's petition and the Companies' response will be addressed separately by the Department.

IV. ORDER

After due consideration, it is

ORDERED: That the August 3, 1994 request of Cambridge Electric Light Company and Commonwealth Electric Company for modification of the award group approved by the Department on May 31, 1994 be and hereby is approved; and it is

FURTHER ORDERED: That the September 2, 1994 request of Cambridge Electric Light Company and Commonwealth Electric Company for modification of the award group approved by the Department on May 31, 1994 be and hereby is approved with respect to Commonwealth Electric Company's residential non-electric heat sector, and denied with respect to Commonwealth Electric Company's residential electric heat sector; and it is

FURTHER ORDERED: That Cambridge Electric Light Company and Commonwealth Electric Company shall comply with all directives contained herein.

By Order of the Department,

Kenneth Gordon, Chairman

Mary Clark Webster, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).